60

* IN THE HIGH COURT OF DELHI

\+ CS (OS) No. 1532 / 1996

Judgment reserved on : 01.03.2006

% Date of decision : 08.03.2006

Dr. Prem Bhatnagar ... ... PETITIONERS
through : Ms. Mala Goel with
Mr. Asheesh Kumar Mishra,
Advocates.

- V E R S U S -

Shri Ravi Mohan Bhatnagar & Ors. ... ... RESPONDENTS
through : Mr. Radha Krishna Sharma,
Advocate for defendant No.1
Mr. K. Mukesh with
Mr. Vikas Goyal, Advocates
for defendants No. 2, 5 to 7.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. The plaintiff has filed a suit for partition and rendition of accounts.

Late L. Roop Narain was the perpetual lessee of plot measuring 212.5

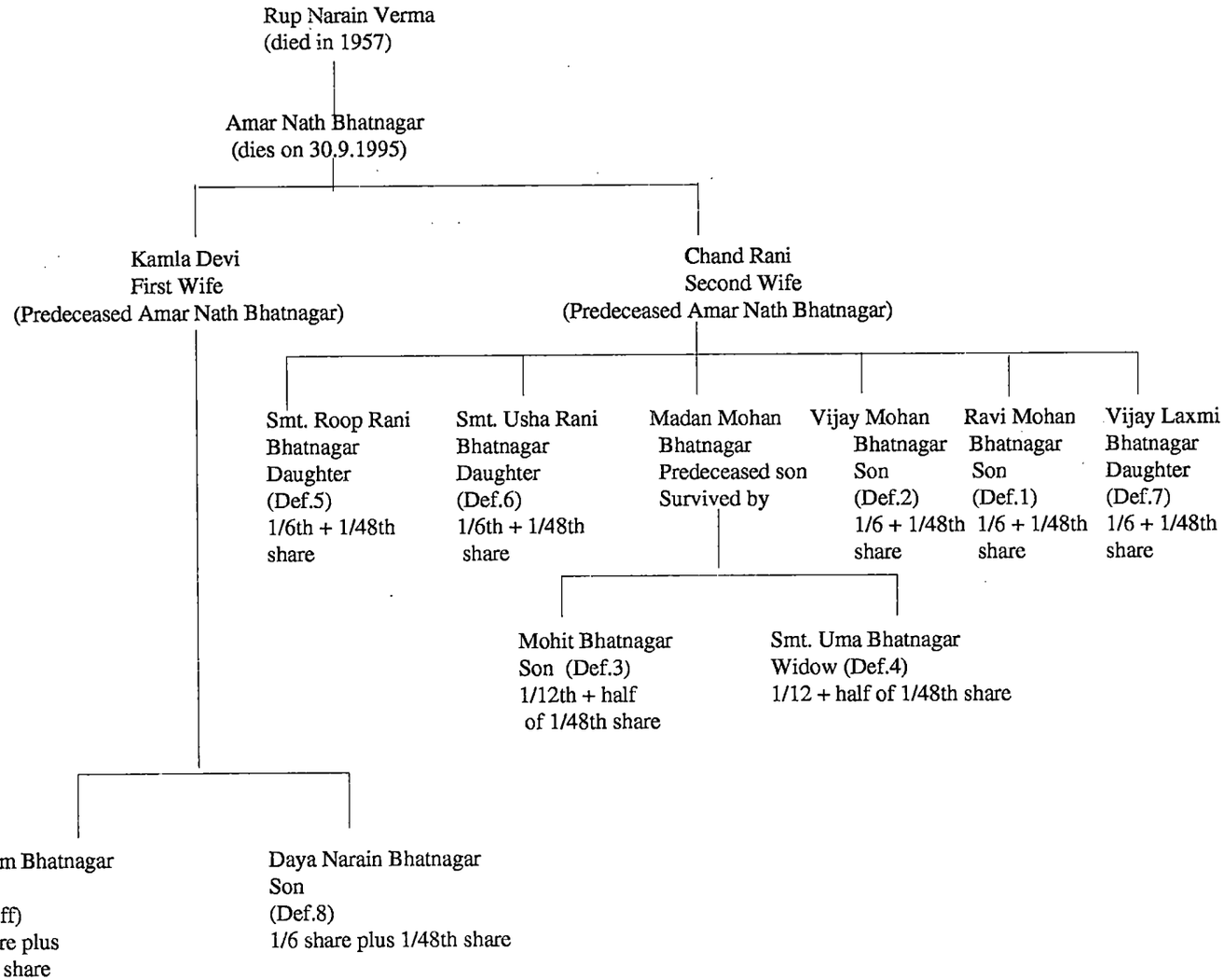
Signature Not Verified
Digitally Signed By:ANULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

61

sq.yds. bearing Plot No.32 Block No.205-C, New Capital of Delhi in pursuance to a perpetual lease deed dated 28.7.1939 (Ex.PW1/1). The said property is now known as 37, Todar Mal Lane, Bengali Market, New Delhi-110001 (hereinafter referred to as 'the suit property'). Shri L. Roop Narain is stated to have passed away in 1957.

2. Late L. Roop Narain was survived by his son late Shri Amar Nath Bhatnagar who is stated to have inherited the various immovable properties of Late L. Roop Narain. Such properties are stated to have been situated in Panipat, Haryana apart from the properties in Delhi but the same are stated to have been sold, the details of which are not known to the plaintiff. The principal property subject matter of the suit is the suit property.

3. The plaintiff is the son of late Shri Amar Nath Bhatnagar who also passed away on 30.9.1995. Shri Amar Nath Bhatnagar married twice. The two wives are Smt. Kamla Devi and Smt. Chand Rani, both of whom pre-deceased Shri Amar Nath Bhatnagar . The plaintiff and defendant No.8 are the sons from the first wife, Smt. Kamla Devi, while defendants No. 1, 2, 5, 6 and 7 are the sons from the second wife, Smt. Chand Rani. Defendants No. 3 and 4 are the son and widow respectively of late Madan Mohan Bhatnagar, a pre-deceased son of Shri Amar Nath Bhatnagar from Smt. Chand Rani. The family tree is as under:


Rup Narain Verma
(died in 1957)
Amar Nath Bhatnagar
(dies on 30.9.1995)
Kamla Devi
First Wife
(Predeceased Amar Nath Bhatnagar)
Chand Rani
Second Wife
(Predeceased Amar Nath Bhatnagar)
Smt. Roop Rani Bhatnagar
Daughter
(Def.5)
1/6th + 1/48th share
Smt. Usha Rani Bhatnagar
Daughter
(Def.6)
1/6th + 1/48th share
Madan Mohan Bhatnagar
Predeceased son
Survived by
Vijay Mohan Bhatnagar
Son
(Def.2)
1/6 + 1/48th share
Ravi Mohan Bhatnagar
Son
(Def.1)
1/6 + 1/48th share
Vijay Laxmi Bhatnagar
Daughter
(Def.7)
1/6 + 1/48th share
Mohit Bhatnagar
Son (Def.3)
1/12th + half of 1/48th share
Smt. Uma Bhatnagar
Widow (Def.4)
1/12 + half of 1/48th share
Dr. Prem Bhatnagar
Son
(Plaintiff)
1/6 share plus 1/48th share
Daya Narain Bhatnagar
Son
(Def.8)
1/6 share plus 1/48th share

4. The plaintiff claims that since the movable and immovable properties were inherited by late Shri Amar Nath Bhatnagar from his father Late L. Roop Narain, all the sons and daughters, whether from the first wife or the second wife have a share in the property. The daughters are stated to have a lesser share by reason of the fact that they will get only a share out of the share falling to late Shri Amar Nath Bhatnagar. The sons are stated to be coparceners in the property having 1/6th share each and would further get 1/48th share from the share falling to late Shri Amar Nath Bhatnagar. The daughters would get 1/48th share. It may be noticed at this stage that during the course of the arguments, however, it has been stated that the daughters would have now equal share arising from the amendment to the Hindu Succession Act, 1956 (hereinafter referred to as 'the said Act') made w.e.f. 9.9.2005 giving equal rights to the females in the coparcenary property.

5. Late Shri Amar Nath Bhatnagar is stated not to have left behind any Will. The property is stated to be under the control and management of defendant No.1 even though he is not the eldest son. The plaintiff is stated to have asked for partition but the defendants failed to oblige.

6. The suit is resisted by defendants No.1, 2, 5, 6 & 7. The principal defence taken is that the property in question is not ancestral in nature in view of the devolution by succession on late Shri Amar Nath Bhatnagar and the same was his self-acquired property. Shri Bhatnagar is stated to

have executed the last Will and testament dated 7.2.1983 duly registered with the Sub-Registrar, Delhi on the same date. It is claimed that in terms of the said Will, the property in question including the plot, some shares and agricultural land at Panipat apart from household effects were bequeathed exclusively to defendant No.1 who became the absolute owner of the property in question. Even the movable property not included in the Will was bequeathed to defendant No.1. Defendant No.1 thus claims exclusive right to the estate of late Shri Amar Nath Bhatnagar. The plaintiff is stated to have separated from his parents in 1954 and did not even invite them for his marriage. Late Shri Amar Nath Bhatnagar is stated to have purchased a plot No. WZ-28, Mukh Ram Park Extn., Tilak Nagar, New Delhi in the name of the plaintiff out of love and affection and the existence of any HUF or coparcanery property has been denied. Defendants No.2,5,6 and 7 have supported the stand taken by defendant No.1. However defendant No.3 to 4 and defendant No.8 are siding with the plaintiff.

The following issues were framed on 1.10.1999:

"1. Whether the plaintiff is in possession of the property?

2. Whether the suit has been valued properly for the purposes of Court fee and the same has been paid thereon?

3. Whether the property in suit is HUF/ancestral, if so to what effect?

4. Whether defendant No.1 has become owner of the suit property by operation of Will executed by the father of defendant No.1?

5. To what share if any, is the plaintiff and other parties entitled to?

6. Whether Shri Amar Kant Bhatnagar had right to bequeath the suit property in favour of defendant No.1?

7. Whether the property in suit is liable to be partitioned and if so which parties is entitled to what share?

8. Relief."

7. The plaintiff examined Mr. Roop Singh, LDC from the office of the L&DO as PW1 who proved the certified copy of the perpetual lease deed as Ex.PW1/1. On demise of late L. Roop Narain, the property was mutated in the name of late Shri Amar Nath Bhatnagar as per the mutation letter dated 1.7.1960 which was proved as Ex.PW1/2.

8. The plaintiff appeared in the witness box as PW2 and affirmed to the facts set out in the plaint. The plaintiff claimed share in the ancestral property as set out in the plaint. The plaintiff denied that he was separated from his father and other family members and proved as Ex.PW2/1, the invitation card for the marriage of his son which bore the name of his father. Other communications between the parties were also referred to show that there was cordial relationship between the parties and the father of the plaintiff attended family functions. In the cross-examination, the plaintiff admitted that he had been living at his residence at Tilak Nagar for the last 30 years. The plaintiff admitted that for the

last 40 years, he had not resided in the suit property nor had he received any income from the suit property. The plaintiff admitted that he had not paid any house tax bill, water or electricity charges. The plaintiff did not dispute that his father Shri Amar Nath Bhatnagar had three sisters and a mentally handicapped brother who had not been arrayed as parties. Only one of his aunts of 90 years of age was alive. The plaintiff denied that he had knowledge of his uncles and aunts having relinquished their share in the suit property in favour of his father. The plaintiff also denied the knowledge of any will of his late father. The will (Ex.DW1/12) was shown to the plaintiff but he refused to identify the signatures of his father at point A on the said will and claimed he could not see properly. The plaintiff had admitted that he could recognize the signatures of his father otherwise. The plaintiff also refused to recognize the signatures of his sister Ms. Rup Chandra as a witness at point B since he claimed that he had never seen her sign. The plaintiff stated that his eyesight was short and he required a magnifying glass and thus the cross-examination was deferred. On the next day, when the plaintiff appeared as a witness, he denied that the signatures on the will were that of his father. The plaintiff also admitted in the cross-examination that he did not attend the marriage of his sister Roop Rani Bhatnagar as he was not invited by his father. He admitted that his father and other parental members did not attend his marriage.

9. Defendant No.1 appeared in the witness box as DW-4 and stated that the suit property was inherited from his grand-father, by his father, his aunts and uncle. The brothers and sisters of late Shri Amar Nath Bhatnagar executed a Relinquishment Deed dated 24.5.1958 which was registered on 29.10.1958. A certified copy of the same was proved as Ex.DW1/1, as the original was stated to have been misplaced. Thus, late Shri Amar Nath Bhatnagar became exclusive owner of the property only in pursuance to the Relinquishment Deed. Defendant No.1 also stated that his father late Shri Amar Nath Bhatnagar had executed a Will dated 7.2.1983 bequeathing all the properties to him which Will had been registered and the same had been proved as Ex.DW1/2. He identified the signatures of late Shri Bhatnagar at point A and also of his elder sister Smt. Rup Chandra at point B. Defendant No.1 stated that the plaintiff was aware about the execution of the Will and none of the other defendants and the plaintiff had, prior to the dispute raised in the suit, claimed any share in the property. Defendant No.1 had been residing with his family at the suit property. The plaintiff and his family members were stated not to have resided in the property since 1954. In the cross-examination, he admitted that the last rites of his father were performed by the plaintiff at the request of the family members and that the wife and son of his deceased brother Mr. Madan Mohan Bhatnagar continued to stay at the house and still resided there; his sister Rup Chandra resides in

America for the last ten years. The plaintiff is stated to have visited his father on some occasions. The shares in the companies were stated to have been transferred by his father in his name before his demise. There is little else which came out during the cross-examination.

10. Ms. Rup Chandra appeared in the witness box as DW1(5). She has stated that her father late Shri Amar Nath Bhatnagar was the sole owner of all of his properties and during his lifetime had executed the will dated 7.2.1983. The will was signed in her presence and in the presence of Shri Ram Avtar Aggarwal. Both the attesting witnesses are stated to have signed in the presence of the testator. Defendant No.1 is thus stated to be the absolute owner of the properties. The witness also stated that the plaintiff had separated from his father and the defendants as far back as in the year 1954. She identified her signatures on the Will. The witness denied the suggestion that her father was suffering from Parkinson's disease. She stated that she had been living in the USA since 1980. Mr. Ram Avtar Aggarwal was stated to be a common friend of the family and was residing in Hapur.

11. Defendant No.7 Mrs. Vijay Laxmi Bhatnagar appeared in the witness box as DW2. The said witness more or less took the same stand as defendant No.1.

12. It is not necessary to discuss the remaining testimony of defendants as it merely supports the stand of defendant No.1.

Issue No.1:

13. The testimony both of the plaintiff and the defendants leaves no manner of doubt that the plaintiff is not in possession of the suit property and in fact had been out of suit property since the year 1954. The testimony also shows that the plaintiff had married outside the caste and had resided separately since 1954. The plaintiff had neither paid house tax nor electricity or water charges. In view of the clear admission of the plaintiff itself, the issue is answered against the plaintiff.

Issue No.2:

14. The plaintiff has valued the suit for the relief of partition at Rs.80 lakhs. The defendant has also not led any evidence to show any contradictory valuation. The plaintiff has, however, paid a fixed court fees with an undertaking to pay requisite court fees after passing of the decree. This is based on a presumption as if the plaintiff was in the joint possession of the property. Admittedly, the plaintiff had been out of the property for more than 40 years during which time he had no concern with the property and thus was in effect seeking possession of the property. Thus, *ad valorem* court fee was liable to be paid on the plaint and thus the issue is answered against the plaintiff.

Issue No.3:

15. The third issue dealing with the question whether the suit property is HUF or ancestral property is really the crucial question. It is not in

dispute that originally the property was purchased as perpetual lessee by the grandfather of the plaintiff, Late L. Roop Narain, in pursuance to the perpetual lease deed Ex.DW1/1. The property thereafter devolved by succession on the children of Late L. Roop Narain on his demise. Late L. Roop Narain was survived by the father of the plaintiff Shri Amar Nath Bhatnagar as also another brother and sisters. However, the property was mutated only in the name of Amar Nath Bhatnagar as per Ex.PW1/2 being the mutation letter dated 1.7.1960. The same has been done in view of the fact that the other heirs of Late L. Roop Narain relinquished their interest in favour of late Amar Nath Bhatnagar. The Relinquishment Deed dated 24.5.1958 registered on 29.10.1958 has been proved by defendant No.1 (DW4) as Ex.DW1/1. This clearly shows that late Shri Amar Nath Bhatnagar had inherited only 1/6th share in the property and became the absolute owner of the property only on the Relinquishment Deed being executed by the other five legal heirs of Late L. Roop Narain.

16. The plea of learned counsel for the plaintiff was based on the premise that as the father of the plaintiff inherited the property from the grand-father of the plaintiff, the property was coparcenary property in the hands of his father and thus his father could not have willed away the property. At best, the Will could have been to the extent of his share. In this behalf, learned counsel has referred to Mulla on Hindu Law,

Eighteenth Edition and has drawn the attention of this court to page 366 where para 212 sub-para (2) deals with a 'joint family' which is as under:

> "(2). the joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation.
>
> Possession of joint family property is not a necessary requisite for the constitution of a joint Hindu family. Hindus get a joint family status by birth, and the joint family property is only an adjunct of the joint family."

17. The aforesaid paragraph has been relied upon to advance the submission that nature and character of a joint and undivided family is not lost by severance in food and worship and possession of joint family property is not a necessary requisite for constitution of a joint Hindu family.

18. Learned counsel also referred to p.367 dealing with a Hindu coparcenary. In para 213, it has been stated as under:

> "To understand the formation of a coparcenary, it is important to note the distinction between ancestral property and separate property. Property inherited by a Hindu from his father, father's father or father's father's father, is ancestral property. Property inherited by him from other relations is his separate property. The essential feature of ancestral property is that if the person inheriting it has sons, grandsons or great-grandsons, they become joint owner's coparceners with him. they become entitled to it due to their birth.

72

These propositions also must be read in the light of what has been stated in the note at the top of this chapter."

19. Learned counsel thus contended that the property inherited by a Hindu from his father is ancestral and since it is not in dispute that late Amar Nath Bhatnagar inherited the property from his father, the same partakes the character of an ancestral property.

20. Learned counsel also drew the attention of this court to p.577 para 307 where it is stated that "every adult coparcener is entitled to demand and sue for partition of the coparcenary property at any time".

21. Learned counsel further referred to p.592 para 321 dealing with the shares on partition that on a partition between the father and his son, each son takes a share equal to that of the father. Thus, if a joint family consists of a father and three sons, the property will be divided into four parts, each of the four members taking one/fourth.

22. Learned counsel referred to the judgment of the Supreme Court in Villiammai Achi v. Nagappa Chettiar & Anr., AIR 1967 SC 1153 to advance the submission that the father in Mitakshara family has a very limited right to make a Will and the mere fact that the property is willed and a probate is taken out would not alter the character of the property. In the said case, the son was given only the residue property from the joint Hindu family property and had taken out probate proceedings. It was held that even if it be assumed that the son had made an election

when he took out probate, there could be no question of his sons being bound by that election because the right which a son takes at his birth in ancestral property is wholly independent of his father.

23. Learned counsel for the plaintiff relied upon the judgment of the Supreme Court in State Bank of India v. Ghamandi Ram (dead) by his LR Gurbax Rai, AIR 1969 SC 1330 where it was observed in para 7 as under:

> "7.....The incidents of co-parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; secondly that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property conjointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common; fifthly that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenery under the Mitakshara School is a creature of law and cannot arise by act of parties except in so far that on adoption the adopted son becomes a co-parcener with his adoptive father as regards the ancestral properties of the latter."
>
> (Emphasis supplied)

24. The learned counsel for the plaintiff thus submitted that a person up to third generation acquires at birth ownership and thus the plaintiff is entitled to his share in the ancestral property.

25. Learned counsel for contesting defendants, on the other hand, contended that the principles sought to be made applicable by the plaintiff to ancestral property stand modified by the said Act. Thus, succession

amongst Hindus has to be as per the Hindu Succession Act, 1956. Section 4 of the said Act provides as under:

> "**4. Over-riding effect of Act. -** (1) Save as otherwise expressly provided in this Act, -
>
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
>
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.
>
> (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

26. It was thus submitted that wherever a provision is made under the Act, the ancient Hindu Law would cease to operate.

27. Learned counsel for the defendants referred to two important judgments of the apex court in this behalf to contend that the property was not an ancestral property. Before discussing the judgments, as noticed above, an important fact is that the property was inherited not by the father of the plaintiff alone but he inherited the same along with his brothers and sisters. The brothers and sisters relinquished their share specifically in his favour as per the Relinquishment Deed and thus there

was no devolution of 5/6th share of the estate on him but rather the same devolved on the father of the plaintiff in pursuance to the Relinquishment Deed. Only 1/6th share devolved from late L. Roop Narain.

28. The first judgment referred to by learned counsel for the contesting defendants is Commissioner of Wealth-tax, Kanpur v. Chander Sen, AIR 1986 SC 1753. The effect of Section 8 of the said Act was discussed. Section 8 is as under:

> ""**8. General rules of succession in the case of males.** - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -
>
> (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
>
> (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
>
> (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
>
> (d) lastly, if there is no agnate, then upon the cognates of the deceased."

29. The Supreme Court held that Section 8 had modified the old Hindu Law and thus his son inherited a self-acquired property of the father as an individual and not as a karta of his own family. The relevant question was framed and answered by the Supreme Court as under:

> "11. The heirs mentioned in Class I of the Schedule are son, daughter etc. including the son of a predeceased son but does not include specifically the grandson, being a son of a son living. Therefore, the

short question, is, when the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family?

xxx xxx xxx

20. In view of the Preamble to the Act i.e. that to modify where necessary or to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by S.8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under S.8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in S.8. Furthermore as noted by the Andhra Pradesh High Court the Act makes it clear by S.4 that one should look to the Act in case of doubt and not to be pre-existing Hindu law. It would be difficult to hold, today the property which devolved on a Hindu under S.8 of the Hindu Succession Act would be HUF property in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under S.8 of the Act included widow, mother, daughter of predeceased son etc."

(Emphasis supplied)

30. The second judgment referred to is of Yudhishter v. Ashok Kumar, AIR 1987 SC 558. It was held that the property which devolved on a Hindu under Section 8 would not be an HUF property in his hand vis-a-vis his own son. It was observed in para 10 as under:

"10. This question has been considered by this Court in Commr. of Wealth Tax, Kanpur v. Chander Sen, (1986) 3 SCC 567; (AIR 1986 SC 1753), where one of us (Sabyasache Mukharji, J.) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally therefore, whenever the father gets a property from whatever source from the grandfather or from any other source, be it separate property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 (of SCC) (at p.1760 of AIR) of the report this Court dealt with the effect of Section 8 of the Hindu Succession Act 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on Hindu Law - 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law 12th Edn. page 919. In that view of the matter it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

31. A reading of the aforesaid two judgments leaves no manner of doubt that the property inherited by a son from his father does not partake the character of an ancestral property nor does he hold it as a karta of his own undivided family. Such a property would be a self-acquired property. The rationale for this has been explained in the aforesaid two judgments as the effect of the provisions of Section 8 of the said Act. Two classes among the heirs mentioned in class I of the said Section would not be permissible as it cannot be accepted that in the hands of a male class I heir, the property would be a joint Hindu family property while in respect of female heirs, no such concept could be applied or contemplated.

32. Learned counsel for the contesting defendants also relied upon the judgment in Dharam Singh & Ors. v. Sadhu Singh (deceased by LRs) & Ors., AIR 1997 P&H 198 to advance the proposition that whether a property is ancestral or separate, on the same being acquired in pursuance to a relinquishment of a share, it is not an ancestral property. Learned counsel also referred to the judgment in Om Prakash v. Sarvjit Singh, AIR 1995 HP 92 which dealt with the issue of the unobstructed/obstructed heritage in case of an ancestral property and held that the property inherited by Hindu from a person other than his father, grand-father or great grand-father is an obstructed heritage and character of such property would not remain ancestral. Since in the present case,

5/6th of the estate was inherited in pursuance to the Relinquishment Deed, the property in any case would not have ancestral character. In Prithi v. Yatinder Kumar & Ors., AIR 1985 P&H 238, it has been held that a property inherited by a coparcener from collaterals is his separate property which is the position in the facts of the present case.

33. Learned counsel for the defendants also referred to the judgment of the Supreme Court in Commissioner of Income-Tax v. P.L. Karuppan Chettiar, 1993 Supp (1) SCC 580 where it was held that in case the father's share is separated from his wife and son and the son along with his wife and children formed an HUF, after the death of the father intestate, the separate property of the father would be divided between his widow and son and the properties inherited by the son had to be treated as his individual and separate properties and not in the hands of the HUF. Learned counsel also referred to the judgment of the learned Single Judge of this court in Rahul Behl & Ors. v. Smt. Ichayan Behl & Anr., 1991 (3) Delhi Lawyers 275 to the same effect. The plaintiffs being the sons of the son were held not entitled to any right as a coparcener. The facts are somewhat apposite and thus can be discussed. The self-acquired property after the death of the deceased was inherited by six heirs under Section 8 of the said Act in equal share. The remaining five legal heirs of the deceased released and relinquished their 1/6th share in favour of defendant No.1 in the suit which Relinquishment Deed was duly registered and was

expressed by the learned Single Judge therein based on the two judgments of the apex court referred to above. There is thus little doubt that the father of the plaintiff acquired the property as his self-acquired property and was thus competent to deal with the same in any manner deemed proper.

36. Faced with the aforesaid legal position, learned counsel for the plaintiff sought to contend that a judgment of a court, while treating it as a precedent, must be read in the context of the facts of the case and in this behalf relied upon the judgment of the apex court in Escorts Ltd. v. Commissioner of Central Excise, Delhi-II, (2004) 8 SCC 335. The Supreme Court observed that a court should not place reliance on a decision without discussion as to how the factual situation fits in with the fact situation of the decision on which reliance is placed, as observations of the court have to be read in the context in which they are made. It was observed in paras 8, 9 and 10 as under:

> "8. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their

81

acted upon by mutation of the property. It was held that on the death of the deceased, the property did not fall in the common pool nor became a coparcenary property but was inherited in separate equal shares by the heirs in their individual capacity. The property was thus not inherited by anyone as *karta* of a joint Hindu coparcenary but in the individual capacity in view of the provisions of the said Act. The property was held to be acquired to the exclusion of the sons of the party which benefited from the inheritance as well as the Relinquishment Deed. It was held not to be a coparcenary property. The learned Judge observed as under:

> "7. "...Hindu Law as it stands today clearly postulates that if it is a self-acquired property of the father it falls into the hands of his sons not as coparcenery property but devolve on them in their individual capacity. Since defendant no.2 acquired 1/6th share by inheritance in his individual capacity, therefore, to my mind, plaintiffs have no right in that 1/6th share of defendant no.2. Defendant no.2 had full authority to release and relinquish his 1/6th share to whomsoever he wanted."

34. The learned Judge also discussed both the aforesaid judgments of the apex court and Commissioner of Wealth-tax, Kanpur case (supra) and Yudhishter's case (supra) and relied on the same.

35. In the present case, the situation is identical and the father of the plaintiff inherited 1/6th share from his own father while the remaining 5/6th share was acquired in pursuance to the Relinquishment Deed executed by his brother and sisters. The judgment in Rahul Behl's case (supra) thus applies on all fours and I am in full agreement with the views

words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton, 1951 AC 737 : (1951) 2 All ER 1 (HL)* , (AC at p.761), Lord MacDermott observed: (All ER p.14 C-D)

> "The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,..."

9. In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294: 1970 AC 1004: (1970) 2 WLR 1140 (HL) Lord Reid said (All ER p.297 g-h),

> "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances."

Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No.2),* (1971) 1 WLR 1062 : (1971) 2 All ER 1267 observed: (All ER p.1274d-e) "one must not, of course, construe even a reserved judgment of even Russell, L.J. As if it were an Act of Parliament;" And, in *Herrington v. British Railways Board,* (1972) 2 WLR 537: (1972) 1 All ER 749 : 1972 AC 877 (HL) Lord Morris said: (All ER p.761 c)

> "There is always peril in treating the words of a speech of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

37. There can be no doubt over the principles sought to be advanced by learned counsel for the plaintiff. A judgment is not to be read as a statute.

However, it is the ratio of the judgment which must be considered. The ratio of the two judgments of the apex court in so far as the principle of law is concerned, is amply clear. The provisions of the said Act modified the Ancient Hindu Law and in view of the clear mandate of Section 4 of the said Act, there can again be little doubt over this matter. The succession thus takes place in accordance with section 8 of the said Act contrary to the Ancient Hindu Law. The two judgments of the Supreme Court have clearly explained this position and have been repeatedly followed in subsequent judgments by the apex court and this court. The principle of law is that in view of Section 8 of the said Act, the son inherits the property from his father as a self-acquired property. It is this principle which has to be kept in mind and which has been made applicable in the given facts of the present case. I am thus unable to accept the plea of learned counsel for the plaintiff.

38. In view of the aforesaid, the properties in the suit are held to be the individual properties of late Shri Amar Nath Bhatnagar and do not have the character of HUF/ancestral properties. The issue is answered against the plaintiff.

Issue No.4:

39. The further devolution of the estate of late Shri Amar Nath Bhatnagar has thus to take place on the premise that the property in suit was a self-acquired property of late Shri Amar Nath Bhatnagar. Thus,

Shri Bhatnagar had full rights to execute a Will in respect of the said estate. The question thus is whether the Will has been proved in accordance with law?

40. The Will is a registered Will and the purport of the Will is absolutely clear. In this behalf, the relevant portion of the Will may be extracted as under:

> "(a) That all the property mentioned in the schedule of property enclosed hereto and located at various places including movable property not included in this will, shall on my death pass on to my youngest son Sri Ravi Mohan Bhatnagar, who shall be its full and absolute owner but he shall not be able to dispose of the immovable property in any manner including mortgage without the written consent of my eldest daughter Smt. Rup Chandra Bhatnagar being first obtained in this behalf. If he does not do so, it shall not be a valid transfer or disposal of the property in question. None of the other sons or daughters will succeed to my property."

41. One of the attesting witnesses to the Will Mrs. Rup Chandra has appeared in the witness box and affirmed to the fact that the Will was signed by the testator late Shri Amar Nath Bhatnagar in her presence and in the presence of other witness Ram Avtar Aggarwal and both the witnesses signed in the presence of the testator. The Will is a registered Will. The signatures of Mr. Amar Nath Bhatnagar have also been identified by the DW4 and other witnesses.

85

42. Learned counsel for the plaintiff was unable to advance any plea which would have thrown a doubt on the authenticity of the Will. In my considered view, the execution of the Will has been duly proved.

43. Learned counsel for the plaintiff sought to contend that on the basis of the Will, defendant No.1 had acquired only a life estate. I am unable to accept this plea since the language of the Will is absolutely clear that the defendant No.1 "shall be its full and absolute owner". The only qualification is that he will not be able to dispose of the property in any manner without the written consent of Smt. Rup Chandra Bhatnagar, defendant No.5. Thus, defendant No.1 takes the property with that qualification. Defendant No.5 is supporting the case of defendant No.1 and thus the plaintiff in any case does not get any rights arising therefrom.

44. Learned counsel for the plaintiff also sought to refer to the last page of the will where it is stated as under:

> "signed by the above named Amar Nath Testator in the presence of us present at the same time & who at his request have hereto signed our name as witnesses hereto in the presence of said Amar Nath and in the presence of each other."

45. Learned counsel sought to contend that the same implies as if the witnesses had signed first while the testator signed later on. I am unable to derive any such conclusion.

46. Learned counsel for the plaintiff referred to the judgment of the

apex court in Mangal Singh & Ors. v. Nathu Singh & Ors., (1998) 8 SCC 598. In the said judgment, the facts set out show that the attesting witnesses' endorsement stated that testator had thumb marked the Will in their presence and that simultaneously they had signed their endorsement. Thereafter, the testator's thumb mark and the signatures of the attesting witnesses as well as that of the counsel drafting the Will appeared in the line with another. In such circumstances, the attesting witnesses' statement of having seen the testator's thumb mark before they attested the Will was held to be wrong and the Will was held to be bad in law.

47. In the present case, the signature of testator has first appeared on the Will and thereafter the endorsement referred to above has been made and the signatures of the witnesses come thereafter. Thus, the said judgment has no application to the present case.

48. In view of the aforesaid, it is held that defendant No.1 has become the owner of the suit property as a consequence of the Will and the issue is answered against the plaintiff.

Issue No.5:

49. Since the property and the estate of late Shri Amar Nath Bhatnagar has devolved exclusively on defendant No.1, the plaintiff or any other party is not entitled to a share in the properties and the issue is answered accordingly.

87

Issue No.6:

50. The finding arrived at on issue No.3 is that the property was the self-acquired property in the hands of late Shri Amar Nath Bhatnagar and thus Shri Bhatnagar had every right to bequeath the property in favour of defendant No.1 and the issue is answered accordingly.

Issue No.7:

51. There is no question of the property in suit being paritioned since the property is the exclusive property of defendant No.1.

Issue No.8:

52. The findings on the aforesaid issues shows that the property has devolved exclusively on defendant No.1 and the plaintiff is not entitled to any share in the property. The suit is thus dismissed with costs.

52. Decree sheet be drawn up accordingly.

March 08, 2006
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SANJAY KISHAN KAUL, J.